

AUG 08 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSHUA TUBALADO,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-76719

Agency No. A46-380-273

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted June 5, 2008
Pasadena, California

Before: KOZINSKI, Chief Judge, ALDISERT ** and BEA, Circuit Judges.

Joshua Tubalado petitions for review of the Board of Immigration Appeals's ("BIA") order affirming the Immigration Judge's ("IJ") decision denying his application for cancellation of removal. We have jurisdiction under 8 U.S.C. §

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Ruggero J. Aldisert, Senior United States Circuit Judge for the Third Circuit, sitting by designation.

1252, and we grant the petition.

Tubalado contends that his father's lawful admission can be imputed to him, and that this additional time allows him to satisfy the seven-year continuous residence requirement. *See* 8 U.S.C. § 1229b(a)(2). The IJ and BIA did not have the advantage of *Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013 (9th Cir. 2005), when they decided Tubalado's case. At oral argument, Tubalado's counsel suggested Tubalado's father had resided continuously in the United States for seven years prior to his service in Japan. Under these circumstances, we believe these proceedings should be remanded to the BIA to consider Tubalado's case anew in light of the teachings of *Cuevas-Gaspar*. The BIA should consider whether the reasoning of *Cuevas-Gaspar* extends to a situation where the alien did not reside in the United States with his parent during the applicable time period, and whether the reasoning of *Cuevas-Gaspar* does or does not affect the BIA's hesitance to impute 8 U.S.C. § 1229b(d)(3).

PETITION GRANTED; REMANDED.